750.

# SUPREME COURT OF THE UNITED STATES,

## No. 205.

---

CHARLES BARNARD ET AL., PLAINTIFFS IN ERROR,

vs.

JOSEPH ADAMS ET AL.

---

IN ERROR TO THE CIRCUIT COURT U. S. FOR THE SOUTHERN DISTRICT OF NEW YORK.

---

INDEX.


| | Original. | Print. |
|---|---|---|
| Writ of error | 1 | 2 |
| Service of citation | 3 | 3 |
| Citation | 4 | 3 |
| Clerk's certificate | 6 | 4 |
| Style of court and appearance of parties | 7 | 4 |
| Bill, or declaration of plaintiffs | 8 | 4 |
| Issues joined | 18 | 9 |
| Jury sworn, verdict | 20 | 10 |
| Judgment | 21 | 10 |
| Assignment of errors in Supreme Court | 23 | 10 |
| Bill of exceptions | 25 | 11 |


G. & G. S. Gideon, printers.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America, to the judges of the circuit court of the United States for the southern district of New York, in the second circuit, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, or some of you, between Joseph Adams, Andrew H. Bennett, and Joseph Fletcher, plaintiffs, and Charles Barnard, Abel Adams, George M. Barnard, and Charles Larkin, defendants, a manifest error hath happened, to the great damage of the said Charles Barnard, Abel Adams, George M. Barnard, and Charles Larkin, as is said, and as appears by their complaint: We, being willing that such error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the justices of the Supreme Court of the United States, at the Capitol, in the city of Washington, together with this writ, so that you have the same at the said place, before the justices aforesaid, on the first Monday of December next, that the record and proceedings aforesaid being inspected, the said justices of the Supreme Court may cause further to be done therein to correct that error, what of right, and according to the law and custom of the United States, ought to be done.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, this first Monday of August, in the year of our Lord one thousand eight hundred and forty-seven and of the independence of the United States the seventy-second.

[SEAL.]

ALEX'R GARDINER,
*Clerk of the circuit court of the U. States of America, for the southern district of N. York, in the second circuit.*

The answer of the judges of the circuit court of the United States for the southern district of New York, in the second circuit, in the within writ mentioned:

The record and proceedings, whereof mention is within made, together with all things concerning the same, are hereby respectfully certified to the justices of the Supreme Court of the United States within mentioned, in a certain schedule to this writ annexed, as within it is commanded.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, this first Monday of December, in the year of our Lord one thousand eight hundred and forty-seven, and of the independence of the United States the seventy-second.

ALEX'R GARDINER,
*Clerk of the U. S. circuit court for the southern district of New York.*

Filed Dec. 4, 1847.

*Supreme Court of the United States.*

CHARLES BARNARD, ABEL ADAMS, GEORGE M. BARNARD, and CHARLES LARKIN, plaintiffs in error,
vs.
JOSEPH ADAMS, ANDREW H. BENNET, and JOSEPH FLETCHER, defendants in error.

UNITED STATES OF AMERICA,
*Southern district of New York,*
*City and county of New York, ss:*

James A. Ruthven, of the city of New York, student at law, being duly sworn, says, that he did, on the fourth day of December instant, serve Henry G. De Forest, esquire, attorney for the defendants in error, in the circuit court of the United States for the southern district of New York, with a copy of the original citation hereunto annexed, by delivering the same to him personally, at the city of New York, and at the same time showing to him the said annexed original.

JAMES A. RUTHVEN.

Sworn this 4th day of December, 1847, before me,
DAVID L. GARDINER, *U. S. Com'r.*

By the honorable Samuel Nelson, one of the judges of the circuit court of the United States for the southern district of New York, in the second circuit.

To Joseph Adams, Andrew H. Bennet, and Joseph Fletcher, greeting:

Whereas Charles Barnard, Abel Adams, George M. Barnard, and Charles Larkin, lately issued out of the Supreme Court of the United States a writ of error, directed to the judges of the circuit court for the United States for the southern district of New York, in second circuit, stating that, in the record and proceedings, as also in the rendition of the judgment of a plea in the said court, before the judge thereof, between Joseph Adams, Andrew H. Bennet, and Joseph Fletcher, plaintiffs, and Charles Barnard, Abel Adams, George M. Barnard, and Charles Larkin, defendants, a manifest error hath happened, to the damage of the said Charles Barnard, Abel Adams, George M. Barnard, and Charles Larkin. And whereas for the correction of that error in due manner the said writ has been issued, returnable at the next stated Supreme Court of the United States, at the city of Washington, on the first Monday of December, one thousand eight hundred and forty-seven—

You are therefore hereby cited to appear before the said Supreme Court, at the city of Washington, on the said first Monday of December, one thousand eight hundred and forty-seven, to do and receive what may appertain to justice to be done in the premises.

Given under my hand, at the city of New York, in the southern district of New York, in the second circuit, the fourth day of December, in the year of our Lord one thousand eight hundred and forty-seven, and of the independence of the United States the seventy-second.

S. NELSON,
*One of the justices of the Supreme Court of the U. S.*

UNITED STATES OF AMERICA,
*Southern district of New York, ss:*

I, Alexander Gardiner, clerk of the circuit court of the United States of America, for the southern district of New York, in the second circuit, do hereby certify, that the writings annexed to this certificate are true copies of their respective originals, on file, and remaining of record in my office.

[SEAL.]

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this third day of January, in the year of our Lord one thousand eight hundred and forty-eight, and of the independence of the said United States the seventy-second.

ALEX'R GARDINER, *Cl'k.*

In the circuit court of the United States, for the southern district of New York:

Pleas in the circuit court of the United States, for the southern district of New York, held at the City Hall in the city of New York, in the said district, before the judges of the said court, of the term of November, in the year of our Lord one thousand eight hundred and forty-four:

Witness Roger B. Taney, esq., chief justice of the Supreme Court of the United States.

SOUTHERN DISTICT OF NEW YORK, *ss:*

Joseph Adams, Andrew H. Bennet, and Joseph Fletcher, citizens of the State of New York, put in their place H. G. De Forest, their attorney, against Charles Barnard, Abel Adams, George M. Barnard, and Charles Larkin, citizens of the State of Massachusetts, in a plea of trespass on the case, upon promises.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Charles Barnard, Abel Adams, George M. Barnard, and Charles Larkin, citizens of the State of Massachusetts, put in their place Charles O'Coner, their attorney, at the suit of Joseph Adams, Andrew H. Bennet, and Joseph Fletcher, of the plea aforesaid.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Be it remembered, that heretofore, to wit, on the last Monday of November term, in the year of our Lord one thousand eight hundred and forty-four, in the circuit court of the United States for the southern district of New York, holden at the City Hall, in the city of New York, in the said district, before the judges of the same court came Joseph Adams, Andrew H. Bennett, and Joseph Fletcher, citizens of the State of New York, by H. G. De Forest, their attorney, and bring into the said court, now here, before the aforesaid judges thereof, their certain bill against Charles Barnard, Abel Adams, George M. Barnard, and Charles Larkin, citizens of the State of Massachusetts, being in custody, &c., of a plea of

trespass on the case upon promises, and there are pledges for the prosecution thereof, to wit, John Doe and Richard Roe, which said bill follows in these words, that is to say:

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Joseph Adams, Andrew H. Bennet, and Joseph Fletcher, citizens of the State of New York, plaintiffs in this suit, by Henry G. De Forest, their attorney, complain of Charles Barnard, Abel Adams, George M. Barnard, and Charles Larkin, citizens of the State of Massachusetts, and doing business there under the mercantile firm of Barnard, Adams, & Co., defendants, in this suit being in custody, &c., in a plea of trespass on the case upon promises, for that, whereas the said plaintiffs, at the several times hereinafter mentioned were, and now are, citizens of the State of New York as aforesaid, and the said defendants were, and now are, citizens of the State of Massachusetts as aforesaid, to wit, at the city of New York, in said southern district; and whereas the said plaintiffs, before and at the time of the happening of the damages and losses in the count mentioned, were owners and proprietors of a certain ship or vessel called the Brutus, and of her tackle, apparel, and furnitures, the same being of great value, to wit, of the value of twenty thousand dollars lawful money of the United States, and which said ship was then riding at anchor in the harbor or roads of the port of Buenos Ayres, in South America, to wit, at said city, and was then and there laden with certain goods and merchandise of the said plaintiffs of great value, to wit, of the value of ten thousand dollars, lawful money as aforesaid; and also with certain other goods and merchandise consigned to said defendants, at said city, of great value, to wit, of the value of twenty thousand dollars, lawful money as aforesaid; and also with certain cargo other than the goods and merchandise of the said plaintiffs, and the said goods and merchandise so consigned to said defendants as aforesaid; and the said goods and merchandise so consigned to said defendants, and the said other cargo, were so laden on board said vessel, to be carried and conveyed therein on the voyage hereafter mentioned, on and for freight to a large amount, to wit, the amount of five thousand dollars, lawful money as aforesaid, to be paid to the said plaintiffs for so carrying and conveying the same; and the said vessel was then and there about to proceed with the said goods and merchandise of the said plaintiffs, and the said goods and merchandise so consigned to the said defendants as aforesaid, and with the said other cargo, upon a certain voyage, to wit, from the said port of Buenos Ayres to said city of New York, and was about to earn the said freight, to be paid to said plaintiffs as aforesaid, to wit, at said city, in said district.

And whereas, also, whilst the said vessel was so riding at anchor in the harbor or roads of the port of Buenos Ayres aforesaid, with the said goods and merchandise of the said plaintiffs, and the said goods and merchandise so consigned to the said defendants, &c., with the said other cargo so on board thereof as aforesaid, and whilst the said [vessel] was about to proceed on the said voyage, and earn the said freight as afore-

said, to wit, at said city, on the first day of October, in the year one thousand eight hundred and forty-four, by the force and violence of storms, winds, and tempestuous weather, the chains or cables of the anchor or anchors of the said vessel, and by which the said vessel was riding at anchor as aforesaid, were parted and broken, and the said vessel, and the said goods and merchandise of the said plaintiffs, and the said goods and merchandise consigned to said defendants as aforesaid, and the said other cargo so on board thereof as aforesaid, became and were in imminent and immediate danger of being damaged, and altogether lost and destroyed by shipment and the perils of the seas; and thereupon, in order to preserve the said vessel, and the said goods and merchandise of the said plaintiffs, and the said goods and merchandise consigned to the defendants as aforesaid, and the said other cargo, and for the common and general benefit, it then and there became necessary to slip the said chains or cables and to run the said vessel on the shore; and the said chains or cables were accordingly slipt, and the sail or sails of the said vessel was or were accordingly set, and the said vessel, with the said goods and merchandise of the said plaintiffs, and with the said goods and merchandise consigned to the said defendants as aforesaid, and with the said other cargo on board thereof as aforesaid, was for the common and general benefit then and there voluntarily and intentionally directed and guided to the shore, and was then and there voluntarily and intentionally stranded and run ashore, to wit, at said city, on the day and year aforesaid; and the said vessel, her tackel, apparel and furniture, and the said goods and merchandise of the said plaintiffs, thereby and in consequence of the stranding and running ashore of said vessel as aforesaid, became and were damaged, wrecked, and altogether lost to the said plaintiffs; and the said plaintiffs, by means of such voluntary stranding of the said vessel as aforesaid, were deprived of the means of earning the said freight, and the said plaintiffs thereby lost the said freight, to be paid to them as aforesaid; and the said plaintiffs then and there expended divers sums of money in and about the preservation of the the said vessel, the said goods and merchandise of the said plaintiffs, the said goods and merchandise consigned to said defendants as aforesaid, and the said other cargo, and for the common and general benefit, amounting together to a large sum of money, to wit, the sum of two thousand dollars.

And the said plaintiffs aver, that the said goods and merchandise consigned to the said defendants as aforesaid were, by means of the voluntary stranding of the said vessel as aforesaid, saved and preserved, and were brought safely to said city, and were there, to wit, on the day and year aforesaid, held in the hands and possession of the said plaintiffs, and by reason of the said premises, the said last mentioned goods and merchandise became and were chargeable with and liable (in the hands of the said plaintiffs) to contribute to the losses by the said plaintiffs suffered, and to the sums of money by them expended as aforesaid, in a general average; and thereupon, in consideration of the said premises, and that the said plaintiffs would deliver the said defendants

the said last mentioned goods and merchandise chargeable and liable as aforesaid, they, the said defendants, afterwards, to wit, at said city, on the day and year aforesaid, undertook, and then and there faithfully promised the said plaintiffs to pay them so much money as the said last mentioned goods and merchandise were chargeable with, and liable to contribute to the loss of the said vessel, of the said goods and merchandise of the said plaintiffs, of the said freight, and to the sums of money by said plaintiffs expended as aforesaid, in a general average, when they, the said defendants, should be thereunto afterwards requested; and the said plaintiffs aver, that they did, afterwards, to wit, on the day and year, and at the place aforesaid, deliver to the said defendants the said goods and merchandise consigned to the said defendants as aforesaid. And they further aver, that the said goods and merchandise, consigned to the defendants as aforesaid, were chargeable with and liable to contribute to the said losses, and to the said sums of money expended by said plaintiffs as aforesaid, in a general average, a large sum of money, to wit, the sum of six thousand dollars, whereof the said defendants then and there had notice, to wit, at said city, on the day and year aforesaid. Nevertheless, the said defendants, although often requested, &c., have not paid to the said plaintiffs the sum of money last mentioned, but to pay the same, or any part thereof, the said defendants have altogether refused, and still do refuse, to the damage of the said plaintiffs of six thousand dollars.

*2d count.*

And whereas, also, afterwards, to wit, on the day and year aforesaid, and at the place aforesaid, the said defendants were consignees of certain goods and merchandise which were laden and put on board a certain other ship of the said plaintiffs, called the Brutus, of great value, to wit, of the value of twenty thousand dollars, to be carried and conveyed therein for freight on a certain voyage from the port of Buenos Ayres aforesaid to said city; and whereas, also, the said last mentioned goods and merchandise were in the hands of the said plaintiffs, and were chargeable with, and liable to pay to said plaintiffs, certain general average for and in respect of certain losses, damages, and expenses by the said plaintiffs incurred in and about the preservation of the said last mentioned ship, and certain cargo on board thereof; and also the said last mentioned goods and merchandise also on board thereof. And the said defendants, in consideration of the premises, and that the said plaintiffs would deliver to said defendants the said last mentioned goods and merchandise so in the hands of said plaintiffs as aforesaid, undertook, and then and there faithfully promised the said plaintiffs to pay to the said plaintiffs so much money as the said last mentioned goods and merchandise were lawfully chargeable with, and liable to pay to said plaintiffs in contribution for general average for the said losses, damages, and expenses in this count mentioned, when they, the said defendants, should be thereunto afterwards requested. And the said plaintiffs aver that they did afterwards, to wit, on the day and year, and at the place

aforesaid, deliver to the said defendants the said last mentioned goods and merchandise, and that the same were lawfully chargeable with, and liable to the payment to said plaintiffs, in contribution for general average, for the losses, damages, and expenses in this count mentioned, a large sum of money, to wit, the sum of six thousand dollars, whereof the said defendants then and there, to wit, at said city, on the day and year aforesaid, had notice. Nevertheless, the said defendants (although often requested, &c.,) have not paid the said last mentioned sum of money to the said plaintiffs, but to pay the same, or any part thereof, to the said plaintiffs, the said defendants have hitherto refused, and still do refuse, to the damage of the said plaintiffs of six thousand dollars.

And, also, for that whereas the said defendants, on the day , and in the year aforesaid, at said city, in said district, were indebted to the said plaintiffs in the further sum of six thousand dollars, lawful money of the United States of America, for so much money before that time lent and advanced by the said plaintiffs to the said defendants, and at the special instance and request of the said defendants. And being so indebted, the said defendants, in consideration thereof, afterwards, to wit, on the same day and year last aforesaid, and at the place aforesaid, undertook, and then and there faithfully promised the said plaintiffs well and truly to pay unto the said plaintiffs the said sum of money last above mentioned, when the said defendants should be thereunto afterwards requested. And whereas also, the said defendants afterwards, to wit, on the same day and year last aforesaid, and at the place aforesaid, were indebted to the said plaintiffs in the further sum of six thousand dollars, like lawful money as aforesaid, for so much money before that time paid, laid out, and expended by the said plaintiffs to and for the use of the said defendants, and at the like special instance and request of the said defendants. And being so indebted, the said defendants, in consideration thereof, afterwards, to wit, on the same day and year last aforesaid, and at the place aforesaid, undertook, and then and there faithfully promised the said plaintiffs well and truly to pay unto the said plaintiffs the said sum of money last above mentioned, when the said defendants should be thereunto afterwards requested. And whereas, also, the said defendants afterwards, to wit, on the same day and year last aforesaid, and at the place aforesaid, were indebted to the said plaintiffs in the further sum of six thousand dollars, like lawful money as aforesaid, for money before that time had and received by the said defendants to and for the use of the said plaintiffs. And being so indebted, the said defendants, in consideration thereof, afterwards, to wit, on the same day and year last aforesaid, and at the place aforesaid, undertook, and then and there faithfully promised the said plaintiffs well and truly to pay unto the said plaintiffs the said sum of money last above mentioned, when the said defendants should be thereunto afterwards requested. And whereas, also, the said defendants afterwards, to wit, on the same day and year last aforesaid, and at the place aforesaid, accounted, together with

the said plaintiffs, of and concerning divers other sums of money before that time due and owing from the said defendants to the said plaintiffs, and then and there being in arrear and unpaid; and upon such accounting the said defendants then and there were found to be in arrear and indebted to the said plaintiffs in the further sum of six thousand dollars, like lawful money as aforesaid. And being so found in arrear, and indebted to the said plaintiffs, the said defendants, in consideration thereof, afterwards, to wit, on the same day and year last aforesaid, and at the place aforesaid, undertook, and then and there faithfully promised the said plaintiffs well and truly to pay unto the said plaintiffs the said sum of money last above mentioned, when the said defendants should be thereunto afterwards requested. Nevertheless the said defendants (although often requested, &c.,) have not yet paid the said several sums of money above mentioned, or any or either of them, or any part thereof, to the said plaintiffs; but to pay the same, or any part thereof, to the said plaintiffs, the said defendants have hitherto wholly refused, and still do refuse, to the damage of the said plaintiffs of six thousand dollars; and thereof the said plaintiffs bring suit, &c.

And the said Charles Barnard, Abel Adams, George M. Barnard, and Charles Larkin, defendants in this suit, by Charles O'Coner, their attorney, come and defend the wrong and injury, when, &c., and say that they did not undertake and promise, in manner and form as the said plaintiffs in this suit have above thereof declared against the said defendants, and of this they put themselves upon the country; and the said plaintiffs likewise, &c.

Therefore, to try the issue above joined, let a jury thereupon come before the judges of the circuit court of the United States, for the southern district of New York, at the City Hall, in the city of New York, on the first Monday of April, in the year of our Lord one thousand eight hundred and forty-five, each of whom, &c., by whom, &c., who neither, &c , to recognise, &c., as well, &c., the same day is given to the parties aforesaid there.

And because the said cause was not tried at the term and time last aforesaid, the cause between the parties aforesaid, and the said issue joined therein, were continued until the last Monday of November, in the year last aforesaid, at a stated term of the said court, to be held at the city of New York, in said southern district.

And because the said cause was not tried at the term and time last aforesaid, the cause between the parties aforesaid, and the said issue joined therein, were continued until the first Monday of April, in the year one thousand eight hundred and forty-six, at a stated term of the said court, to be held at the city of New York, in said southern district.

And because the said cause was not tried at the term and time last aforesaid, the cause between the parties aforesaid, and the said issue joined thereon, were continued until the third Monday of November, in the year last aforesaid, at a stated term of the said court, to be held at the city of New York, in said southern district.

And because the said cause was not tried at the term and time last

aforesaid, the cause between the parties aforesaid, and the said issue joined thereon, were continued until the first Monday of April, in the year one thousand eight hundred and forty-seven, at a stated term of said court, to be held at the city of New York, in said southern district.

And now at this day, to wit, on the first Monday of April, in the year of our Lord one thousand eight hundred and forty-seven, before the judges aforesaid, at the City Hall, in the city of New York, come as well the said plaintiffs by their attorney aforesaid, as the said defendants by their attorney aforesaid, and the jurors of the said jury summoned to try the said issue being called, also come, who to speak the truth of the matters above contained, being chosen, tried, and sworn, say upon their oath, that the said defendant did undertake, and promise in manner and form as the said plaintiffs have above complained against them, and they assess the plaintiffs' damages, by reason of the premises, over and above the costs and charges by them about their suit in this behalf expended, to three thousand one hundred and ninety-six dollars and twenty-five cents, and for those costs and charges to six cents.

Therefore, it is considered that the said plaintiffs do recover against the said defendants his said damages, costs, and charges by the jurors aforesaid in form aforesaid assessed, and also two hundred and eighteen dollars and seventy cents for his said costs and charges by the said court now here adjudged of increase to the said plaintiffs, and with their assent; which said damages, costs, and charges, in the whole, amount to three thousand four hundred and fourteen dollars and ninety-five cents.

And the said defendants, mercy, &c.

Judgment signed this 3d day of December, A. D. 1847.

DAVID L. GARDINER,
*Dep. clerk.*

Filed Dec. 4, 1847.

*Assignment of error.*

Supreme court of the United States.

CHARLES BARNARD, Abel Adams, George M. Barnard, and Charles Larkin, plaintiffs in error,
vs.
JOSEPH ADAMS, Andrew H. Bennet, and Joseph Fletcher, defendants in error.

And afterwards, to wit, on the first Monday of December, of the term of December, in the year one thousand eight hundred and forty-seven aforesaid, before the justices of the Supreme Court of the United States, come the said Charles Barnard, Abel Adams, George M. Barnard, and Charles Larkin, plaintiffs in error, by A. Schell, their attorney, and say that in the record aforesaid, and in the proceedings aforesaid, and also in giving the judgment aforesaid, there is a manifest error in this, to wit, that the declaration aforesaid, and the matters therein contained,

are not sufficient in law for the said Joseph Adams, Andrew H. Bennet, and Joseph Fletcher, to have or maintain their aforesaid action thereof against the said Charles Barnard, Abel Adams, George M. Barnard, and Charles Larkin; and there is also error in this, to wit, that by the record aforesaid it appears that the judgment aforesaid, in form aforesaid given, was given for the said Joseph Adams, Andrew H. Bennet, and Joseph Fletcher, against the said Charles Barnard, Abel Adams, George M. Barnard, and Charles Larkin, whereas by the law of the land the said judgment ought to have been given for the said Charles Barnard, Abel Adams, George M. Barnard, and Charles Larkin, against the said Joseph Adams, Andrew H. Bennet, and Joseph Fletcher. And the said Charles Barnard, Abel Adams, George M. Barnard, and Charles Larkin, pray that the judgment aforesaid, for the errors aforesaid, and for other errors in the record and proceedings aforesaid, may be reversed, annulled, and altogether held for nothing; and that they may be restored to all things which they have lost by occasion of the said judgment, &c.

A. SCHELL,
*Attorney for plaintiffs in error.*
N. BOWDITCH BLUNT,
*Of counsel.*

Filed December 4, 1847.

In the circuit court of the United States, for the southern district of New York, 2d circuit.

JOSEPH ADAMS, Andrew H. Bennet, and Joseph Fletcher
vs.
CHARLES BARNARD, Abel Adams, George M. Barnard, and Charles Larkin.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Be it remembered, that in the term of November, in the year of our Lord one thousand eight hundred and forty-four, came Joseph Adams, Andrew H. Bennet, and Joseph Fletcher, plaintiffs, into the circuit court of the United States of America, for the southern district of New York, and impleaded Charles Barnard, Abel Adams, George M. Barnard, and Charles Larkin, defendants in a certain plea of trespass on the case upon promises, in which the said plaintiffs declared against the said defendants. For that whereas the said plaintiffs, at the several times hereafter mentioned were, and now are, citizens of the State of New York as aforesaid, and the said defendants were, and now are, citizens of the State of Massachusetts as aforesaid, to wit, at the city of New York, in the said southern district. And whereas the said plaintiffs, before and at the time of the happening of the damages and losses in this count mentioned, were owners and proprietors of a certain ship or vessel called the Brutus, and of her tackle, apparel, and furniture, the

same being of great value, to wit, of the value of twenty thousand dollars, lawful money of the United States, and which said ship was then riding at anchor in the harbor or roads of the port of Buenos Ayres, in South America, to wit, at said city, and was then and there laden with certain goods and merchandise of the said plaintiffs, of great value, to wit, of the value of ten thousand dollars, lawful money as aforesaid, and also with certain other goods and merchandise consigned to said defendants at said city, of great value, to wit, of the value of twenty thousand dollars, lawful money as aforesaid; and also with certain cargo other than the goods and merchandise of the said plaintiffs, and the said goods and merchandise so consigned to said defendants as aforesaid; and the said goods and merchandise so consigned to said defendants, and the said other cargo, were so laden on board said vessel to be carried and conveyed therein on the voyage hereafter mentioned, on and for freight to a large amount, to wit, the amount of five thousand dollars, lawful money as aforesaid, to be paid to the said plaintiffs for so carrying and conveying the same; and the said vessel was then and there about to proceed with the said goods and merchandise of the said plaintiffs, and the said goods and merchandise so consigned to said defendants as aforesaid, and with the said other cargo, upon a certain voyage, to wit, from the said port of Buenos Ayres to said city of New York, and was about to earn the said freight to be paid to said plaintiffs as aforesaid, to wit, at said city in said district.

And whereas, also, whilst the said vessel was so riding at anchor in the harbor or roads of the port of Buenos Ayres aforesaid, with the said goods and merchandise of the said plaintiffs, and the said goods and merchandise so consigned to the said defendants, and with the said other cargo so on board thereof as aforesaid, and whilst the said vessel was about to proceed on the said voyage and earn the said freight as aforesaid, to wit, at said city, on the first day of October, in the year one thousand eight hundred and forty-four, by the force and violence of storms, winds, and tempestuous weather, the chains or cables of the anchor or anchors of the said vessel, and by which said vessel was riding at anchor as aforesaid, were parted and broken, and the said vessel and the said goods and merchandise of the said plaintiffs, and the said goods and merchandise consigned to said defendants as aforesaid, and the said other cargo so on board thereof as aforesaid, became and were in imminent and immediate danger of being damaged and altogether lost and destroyed by shipwreck and the perils of the seas; and thereupon, and in order to preserve the said vessel, and the said goods and merchandise of the said plaintiffs, and the said goods and merchandise consigned to the defendants as aforesaid, and the said other cargo, and for the common and general benefit, it then and there became necessary to slip the said chains or cables, and to run the said vessel on the shore; and the said chains or cables were accordingly slipt, and the sail or sails of the said vessel was or were accordingly set, and the said vessel, with the said goods and merchandise of the said plaintiffs, and with the said goods and merchandise consigned to the said defendants as aforesaid,

and with the said other cargo on board thereof as aforesaid, was for the common and general benefit then and there voluntarily and intentionally directed and guided to the shore, and was then and there voluntarily and intentionally stranded and run ashore, to wit, at said city, on the day and year aforesaid; and the said vessel, her tackle, apparel, and furniture, and the said goods and merchandise of the said plaintiffs, thereby and in consequence of the stranding and running ashore of said vessel as aforesaid, became and were damaged, wrecked, and altogether lost to the said plaintiffs; and the said plaintiffs by means of such voluntary stranding of the said vessel as aforesaid, were deprived of the means of earning the said freight, and the said plaintiffs thereby lost the said freight to be paid to them as aforesaid, and the said plaintiffs then and there expended divers sums of money in and about the preservation of the said vessel, the said goods and merchandise of the said plaintiffs, the said goods and merchandise consigned to said defendants as aforesaid, and the said other cargo, and for the common and general benefit, amounting altogether to a large sum of money, to wit, the sum of two thousand dollars. And the said plaintiffs aver, that the said goods and merchandise consigned to the said defendants as aforesaid, were by means of the voluntary stranding of the said vessel as aforesaid, saved and preserved, and were brought safely to said city, and were there, to wit, on the day and year aforesaid, held in the hands and possession of the said plaintiffs; and by reason of the said premises, the said last mentioned goods and merchandise became and were chargeable with, and liable (in the hands of the said plaintiffs) to contribute to the losses by the said plaintiffs suffered, and to the sums of money by them expended as aforesaid, in a general average. And thereupon, and in consideration of the said premises, and that the said plaintiffs would deliver to the said defendants the said last mentioned goods and merchandise, chargeable and liable as aforesaid, they, the said defendants, afterwards, to wit, at the said city, on the day and year aforesaid, undertook, and then and there faithfully promised the said plaintiffs to pay to them so much money as the said last mentioned goods and merchandise were chargeable with, and liable to contribute to the loss of the said vessel, of the said goods and merchandise of the said plaintiffs, of the said freight, and to the sums of money by said plaintiffs expended as aforesaid, in a general average, when they, the said defendants, should be thereunto afterwards requested. And the said plaintiffs aver that they did, afterwards, to wit, on the day and year, and at the place aforesaid, deliver to the said defendants the said goods and merchandise consigned to the said defendants as aforesaid; and they further aver that the said goods and merchandise consigned to the defendants as aforesaid were chargeable with, and liable to contribute to the said losses, and to the said sums of money expended by said plaintiffs as aforesaid, in a general average, a large sum of money, to wit, the sum of six thousand dollars, whereof the said defendants then and there had notice, to wit, at said city, on the day and year aforesaid. Nevertheless the said defendants, although often requested, &c., have not paid to the said plaintiffs the

sum of money last mentioned, but to pay the same, or any part thereof, the said defendants have altogether refused, and still do refuse, to the damage of the said plaintiffs of six thousand dollars.

And whereas, also, afterwards, to wit, on the day and year aforesaid, and at the place aforesaid, the said defendants were consignees of certain goods and merchandise which were laden and put on board a certain other ship of the said plaintiffs, called the Brutus, of great value, to wit, of the value of twenty thousand dollars, to be carried and conveyed therein for freight, on a certain voyage from the port of Buenos Ayres aforesaid, to said city; and whereas, also, the said last mentioned goods and merchandise were in the hands of the said plaintiffs, and were chargeable with and liable to pay to said plaintiffs certain general average for and in respect of certain losses, damages, and expenses by the said plaintiffs incurred in and about the preservation of the said last mentioned ship, and certain cargo on board thereof, and also the said last mentioned goods and merchandise also on board thereof. And the said defendants, in consideration of the premises, and that the said plaintiffs would deliver to the said defendants the said last mentioned goods and merchandise so in the hands of the said plaintiffs as aforesaid, undertook, and then and there faithfully promised the said plaintiffs, to pay to the said plaintiffs so much money as the said last mentioned goods and merchandise were lawfully chargeable with, and liable to pay to said plaintiffs in contribution for general average for the said losses, damages, and expenses in this count mentioned, when they, the said defendants, should be thereunto afterwards requested. And the said plaintiffs aver, that they did afterwards, to wit, on the day and year, and at the place aforesaid, deliver to the said defendants the said last mentioned goods and merchandise, and that the same were lawfully chargeable with, and liable to the payment to the said plaintiffs, in contribution for general average for the losses, damages, and expenses in this count mentioned, a large sum of money, to wit, the sum of six thousand dollars, whereof the said defendants then and there, to wit, at said city, on the day and year aforesaid, had notice. Nevertheless the said defendants (although often requested, &c.) have not paid the said last mentioned sum of money to the said plaintiffs, but to pay the same or any part thereof to the said plaintiffs the said defendants have hitherto refused, and still do refuse, to the damage of the said plaintiffs of six thousand dollars.

And also, for that, whereas the said defendants on the day and in the year aforesaid, at said city, in said district, were indebted to the said plaintiffs in the further sum of six thousand dollars, lawful money of the United States of America, for so much money before that time lent and advanced by the said plaintiffs to the said defendants, and at the special instance and request of the said defendants; and being so indebted, the said defendants, in consideration thereof, afterwards, to wit, on the same day and year last aforesaid, and at the place aforesaid, undertook, and then and there faithfully promised the said plaintiffs well and truly to

pay unto the said plaintiffs the said sum of money last above mentioned, when the said defendants should be thereunto afterwards requested.

And whereas, also, the said defendants afterwards, to wit, on the same day and year last aforesaid, and at the place aforesaid, were indebted to the said plaintiffs in the further sum of six thousand dollars, like lawful money as aforesaid, for so much money before that time paid, laid out, and expended by the said plaintiffs to and for the use of the said defendants, and at the like special instance and request of the said defendants; and being so indebted, the said defendants in consideration thereof, afterwards, to wit, on the same day and year last aforesaid, and at the place aforesaid, undertook, and then and there faithfully promised the said plaintiffs, well and truly to pay unto the said plaintiffs the said sum of money last above mentioned, when the said defendants should be thereunto afterwards requested.

And whereas, also, the said defendants afterwards, to wit, on the same day and year last aforesaid, and at the place aforesaid, were indebted to the said plaintiffs in the further sum of six thousand dollars, like lawful money as aforesaid, for money before that time had and received by the said defendants to and for the use of the said plaintiffs, and being so indebted, the said defendants in consideration thereof, afterwards, to wit, on the same day and year last aforesaid, and at the place aforesaid, undertook, and then and there faithfully promised the *the* said plaintiffs, well and truly to pay unto the said plaintiffs the said sum of money last above mentioned, when the said defendants should be thereunto afterwards requested.

And whereas, also, the said defendants afterwards, to wit, on the same day and year last aforesaid, and at the place aforesaid, accounted together with the said plaintiffs of and concerning divers other sums of money before that time due and owing from the said defendants to the said plaintiffs, and then and there being in arrear and unpaid, and upon such accounting the said defendants then and there were found to be in arrear and indebted to the said plaintiffs in the further sum of six thousand dollars, like lawful money as aforesaid; and being so found in arrear and indebted to the said plaintiffs, the said defendants in consideration thereof, afterwards, to wit, on the same day and year last aforesaid, and at the place aforesaid, undertook, and then and there faithfully promised the said plaintiffs, well and truly to pay unto the said plaintiffs the said sum of money last above mentioned, when the said defendants should be thereunto afterwards requested. Nevertheless the said defendants (although often requested, &c.) have not yet paid the said several sums of money above mentioned, or any, or either of them, or any part thereof to the said plaintiffs, but to pay the same or any part thereof to the said plaintiffs, the said defendants have hitherto wholly refused, and still do refuse, to the damage of the said plaintiffs of six thousand dollars; and thereof the said plaintiffs bring suit, &c.

And the said defendants pleaded to the said declaration, as follows:

And the said Charles Barnard, Abel Adams, George M. Barnard, and Charles Larkin, defendants in this suit, by Charles O'Conor, their at-

torney, come and defend the wrong and injury, when, &c., and say, that they did not undertake and promise in manner and form as the said plaintiffs in this suit have above thereof declared against the said defendants, and of this they put themselves upon the country; and the said plaintiffs likewise, &c.

And thereupon issue was joined between the said plaintiffs and the said defendants; and afterwards, at and during a term of the said court held at the City Hall, in the city of New York, in the said southern district of New York, before the honorable Samuel Nelson, one of the associate justices of the supreme court, and then solely presiding in and holding the said circuit court, on the sixteenth day of April, in the year one thousand eight hundred and forty-seven, the aforesaid issue so joined between the said parties came on to be tried by a jury of the said district for that purpose duly empannelled, that is to say, George G. Haydock, James Harriott, Jesse Van Anker, Cornelius Storm, Anthony Fick, Roger Pegg, John Patton, John Conroy, Enos Burrowes, William Conroy, George H. Ahrens, and Giles Williams, good and lawful men of the said district; at which day came there as well the said plaintiffs as the said defendants, by their respective attorneys, and the jurors aforesaid, empannelled to try the issue aforesaid, being also called, come, and were then and there in due manner chosen and sworn or affirmed to try the said issue. And the said plaintiffs by their counsel, to maintain and prove the said issue on their part, gave in evidence two certain depositions in writing made by one Joseph Brown, in the words following:

U. S. circuit court.

JOSEPH ADAMS and others
vs.
CHARLES BARNARD and others.

Joseph Brown, a witness, produced and examined by and in behalf of the plaintiffs in the above cause, being duly sworn, deposeth and saith, that he is of the age of thirty-four years and upwards; that he resides in Georgetown, in the District of Columbia, and that he is about to depart from the State of New York for said Georgetown.

Q. Do you know whether the ship Brutus was lost in the month of October, A. D. 1843?

A. She was lost in the month of October, 1843.

Q. Were you connected with the said ship at the time of the loss, and immediately before; and, if so, in what capacity.

A. I was first officer.

Q. On the day in which she was lost, and before the peril in which she was lost commenced, where did she lie; and was she destined on any and what voyage?

A. She lay in the outer roads of Buenos Ayres; she was destined on a voyage to New York.

Q. Had she on board any cargo; if so, what was it, and where was it laden, and to what port destined?

A. She had. It was wool, bales of nutria skins, dry hides, horns,

and jerked beef; it was laden at Buenos Ayres, and destined to New York.

Q. Was there any gale of wind on the day in which the vessel was lost; if so, when did it commence, and what was its direction?

A. There was; it commenced on the evening previous to the 8th of October, from the southeast.

Q. How was your vessel moored on the 8th of October, when the gale began to become serious, and at what distance from the shore near Buenos Ayres?

A. Our best bower anchor was down the river, to the southeast, and the smaller bower was to back it; the best bower anchor the ship was riding by at the commencement of the gale. At about 4 o'clock in the morning the ship was dragging, and the small bower was let go. She was moored about seven miles from the shore near Buenos Ayres, I should judge.

Q. What is the width of the river, opposite to Buenos Ayres, where the vessel was lying?

A. It is called fifteen miles to Colonia, as I have been told, which is opposite to Buenos Ayres.

Q. Was your vessel moored in the usual place of mooring of such vessels at Buenos Ayres?

A. She was.

Q. What number of men was your crew on board at the time of the loss?

A. Twelve, including myself.

Q. Will you describe the circumstances of the loss, beginning from the time the anchors dragged?

A. I had charge of the deck at the time the best bower chain parted, with half the crew on deck. The chain parted similar to the report of a gun, or what I judged to be the chain parted. I immediately went forward, with four of the crew, and found the chain hanging slack under the bottom. Immediately called all hands, and commenced clearing the decks. (It was about nine o'clock in the evening the chain parted.) We cleared the decks—provisions, &c., that were loose on deck, and put them below. We made an endeavor to get the parted chain in, but could not succeed. I gave the ship the whole of the small bower chain before clearing the decks. At 10 o'clock the small bower parted with a sudden noise, and the ship commenced drifting. I found she was drifting broadside with the wind and current, and I endeavored by setting the foretopmast staysail, bracing the head yards back, [and] squaring the after yards to get the ship before the wind, but could not succeed, on account of the chains keeping the ship broadside to the sea, which was making a breach over her fore and aft. I set the foresail, to get her head round; but all would not do till I slipped the ends of the chains. I immediately put two men at the wheel, and one man at the lead, and determined to run the ship ashore, for the preservation of the cargo and the lives of the crew. I ran up the river, until I perceived a point extending from the land during the flashes of lightning, which

it would have been impossible to *have gone* by in the ship; whereupon I directed the ship to the beach, direct to the land, or where I judged it was by something which I took to be a house by the flashes of lightning, but which I afterwards found out to be a large tree. She struck the beach about midnight, aft first, which immediately knocked away the rudder. We hauled the foresail up, but let the staysail remain on to keep her head straight, and she continued to work herself up until daylight.

Q. At the time when the best bower parted, and also at the time the small bower parted, what was the state of the sea?

A. The sea was running very angry—very ugly.

Q. At the time when this gale came on, what was the state of the vessel, as to seaworthiness, and being fitted for lying where she did, in safety?

A. She was in a good state.

Q. What became of the ship finally?

A. She was sold at auction. The water left her; she was abandoned; she never got off, to my knowledge.

Q. Could she have been got off with any means to be had there, or in that vicinity?

A. She could not by any means in that vicinity.

Q. What became of the cargo?

A. It was transhipped, sir.

Q. Was it got out by the boats, or how?

A. Part by boats, and part by carts.

Q. Who owned the vessel?

A. Joseph Adams, Andrew Bennet, (I believe his name is Andrew,) and Mr. Fletcher.

Q. Do you know whether the vessel was broken from being wrecked?

A. Not to my knowledge, except about aft; a little of the light work about the stern was broke.

Q. Why could she not have been got off?

A. I should judge the expense would have been more than she would have been worth to have been fitted again; she was so far from the water.

*Cross examined by Mr. O'Conor.*

Q. Who was master of the Brutus at the time of her loss?

A. I was in charge of the vessel.

Q. Did you then hold the office of captain or master?

A. No, sir.

Q. Who did hold that office?

A. Joseph Adams, one of the owners.

Q. What was your office on board?

A. First mate.

Q. Where was Captain Adams, at the time of the loss?

A. He was at the city of Buenos Ayres.

Q. When had he last been on board the vessel?

A. I cannot recollect. He was on board only once while we were loading; I cannot recollect the day nor the date.

Q. Where did the vessel belong?

A. To New York.

Q. Was her last passage from New York to Buenos Ayres?

A. Yes.

Q. When did she arrive at Buenos Ayres?

A. On the 1st September, 1843.

Q. Did Captain Adams go out to Buenos Ayres in her?

A. Yes.

Q. When did he leave her to go on shore?

A. On the 1st day of September, as soon as we came to an anchor.

Q. Was he never on board after that, except once?

A. Only once.

Q. How long did he stay on board that time?

A. He was on board about half an hour, I reckon.

Q. What was the occasion or cause of that visit to the vessel?

A. It was respecting cargo.

Q. When it began to blow on the evening of the 7th of October, was the vessel lying at the same place at which she had anchored on the 1st September previously?

A. Yes, sir.

Q. What was the vessel's tonnage?

A. 298 tons.

Q. Was there any officer besides yourself?

A. Yes, a second mate; we had a cook and steward, and eight men.

Q. Did you sail from New York with that complement and the captain?

A. We did.

Q. Did you lose any hands, and take in any?

A. One hand ran away, and we shipped one in his place.

Q. Were there any other American vessels lying there when the blow commenced?

A. Yes.

Q. Name them and their masters?

A. The ship Coriolanus, of Boston, captain's name unknown; barque Active, of Baltimore, Captain Pigot; the barque Potomac, Captain Beers; barque Hobart, captain's name forgotten. I cannot recollect what other vessels were there.

Q. Were there a number of other vessels belonging to other countries lying there?

A. Yes, sir, a good many foreign vessels.

Q. Were any of these vessels lost in that storm?

A. Yes, sir.

Q. How many, and which of them?

A. Two new Spanish barques, two English brigs went ashore, one American brig, the Arcturus of Boston; there were seven altogether, including our vessel that went ashore—one of them was a Danish brig.

Q. How happened it that the captain was never on board during this long period?

A. He had the whole of the business of receiving and shipping the cargo to attend to. It was a customary thing there for the masters to remain on shore.

Q. Did you receive your cargo by the lighters?

A. Yes; part by lighters and part by boats.

Q. When you found your vessel drifting broadside, did you succeed in getting her before the wind?

A. I did; I slipped the ends of the chains and set the foresail, and effected it by that means.

Q. How did you then take your course up the river, or towards the bank?

A. Up the river and in shore withal; I mean inclining a little to the Buenos Ayres side of the river.

Q. Why did you incline towards the side of the river?

A. Because no vessel could go the other side of the river, as I was informed.

Q. What was the reason?

A. It is represented on the chart that there are sunken rocks on the Colonie side of the river, several miles from the shore.

Q. Why did you not keep the middle of the stream without inclining to either side?

A. Because we were nearer the Buenos Ayrean side when we started.

Q. Had you no other reason for inclining toward that side?

A. I expected to save the ship, possibly; the cargo and crew anyhow; that was my expectations, the whole of it; but then it was uncertain.

Q. When you first slipped the ends of the chains, set your foresail and got before the wind, did you intend to run the vessel ashore?

A. Yes, sir, I intended to run her ashore; she would have run ashore anyhow if I had not made sail; there was nothing to stop her.

Q. About what o'clock was it when you slipped the ends of the chains and got before the wind?

A. I suppose it must have been half past ten o'clock when we slipped the ends of the chains, and about half an hour after that we got before the wind. The whole action took some time, and we got before the wind about 11 o'clock.

Q. If you intended to run the vessel ashore when you first got before the wind, why did you not immediately give her a direction to the shore?

A. On account of a bank or shallow on the Buenos Ayrean side of the river, extending out about 3 or 4 miles.

Q. About what time did you get in sight of the point of land of which you speak?

A. About midnight, after we had been sailing up the stream about an hour and a half; we ran ten miles from the slipping of the chains before we saw the point.

Q. What is that point called?

A. Saint Isidro.

Q. When you came in sight of that point, did you change the course of your vessel?

A. I did.

Q. What direction did you give her?

A. Directly for the Buenos Ayrean side of the river, steering about southwest or southwest by south, or thereabouts.

Q. Did you know any thing of the nature of the beach there, or on the point of Saint Isidro?

A. I did not.

Q. Why did you steer for the Buenos Ayrean side, instead of keeping on for the point?

A. I was afraid she would not bring by the point; I think she would not, and I was afraid of rocks off the point; when the flashes of lightning enabled me to see, I thought I could see something black like rocks off the point.

Q. If you had kept on your course, where would you have struck?

A. I think on the outer end of the point.

Q. Did you in fact get a better berth by the change you made?

A. I did.

Q. What kind of a beach did you find where you struck?

A. A level beach, with little elevations which they call tusks; we drove over them.

Q. How far up on the beach from low-water mark did the vessel go?

A. About two hundred yards from ordinary low-water mark, and high water would just come up to the stern of the ship at very high tides and full moon; at the highest tide I saw, this happened once, so that a boat could come alongside.

Q. At the time you changed your direction last, could you see the shore?

A. I could not, except the point; I did not see the shore on which the ship went until after she struck; I did see what I took to be a house, as before mentioned, but I could not see any land.

Q. Did you consult with anybody as to the propriety of running the ship ashore before you did it?

A. I did not consult with any one but the second mate; I had no one else to consult.

Q. Did you consult with him?

A. No, not until after she struck, no more than to give him my orders.

Q. Did you then act upon your own judgment, and without consulting anybody?

A. Certainly I did.

Q. Did you say to anybody before she struck that you intended to run her ashore?

A. I said so in presence of the crew.

Q. At what time did you say that?

A. At the time that we slipped the chains.

Q. Had you then no hope of riding out the gale by keeping up the stream?

A. No, I saw no prospect of it.

Q. Did you afterwards, and before she went ashore, repeat that determination?

A. I don't recollect that I did.

Q. Did this shallow or bank extend as far up the river as to where you struck?

A. Yes, it was shoal all along that side, a considerable distance from the land, all the way up to point Saint Isidro.

Q. What was the name of the second mate?

A. Jacob Marshall.

Q. Where does he belong?

A. I don't know, I believe at Cuxhaven, or somewhere on the Elbe.

Q. When you altered the course of the vessel the last time, was it with the express intention of running ashore?

A. Yes, sir.

Q. How long did you remain at Buenos Ayres after she struck?

A. I remained four weeks on board of the Brutus, discharging cargo and stripping her.

Q. Did you come in the vessel that brought home the cargo?

A. Yes.

Q. Have you been on any voyage since?

A. Yes.

Q. Did any of the crew come home with you?

A. Yes.

Q. Do you know where any of them now are or reside?

A. The steward came home with us, I don't know his name; he is a colored man, and resides somewhere in the city. One of the crew, named John Chambers, boards in New York with Captain Gelston, as I understand; Charles Valentine was the only other one that came with us, but I don't know where he resides. Captain Gelston is a sailors' boarding-house keeper.

*Direct examination resumed.*

Q. How long have you been in the trade at Buenos Ayres?

A. This is the only voyage I made to that place, except one before, when I was before the mast.

*Cross examination.*

Q. Is it your opinion that the vessel would have gone ashore notwithstanding any thing you and your crew could have done to prevent it?

A. Certainly she would.

JOSEPH BROWN.

Sworn before me, this 21st day of February, A. D. 1845.

GEO. W. MORTON, *U. S. com'r.*

*Second deposition of the said Joseph Brown.*

JOSEPH ADAMS et als.
vs.
CHARLES BARNARD et als. } U. S. circuit court.

Joseph Brown, a witness produced the second time by and on behalf of the plaintiffs, and examined as a witness in this cause de bene esse, saith:

Q. State, as nearly as you can, how much jerked beef was on board the ship Brutus at the time of her stranding?

A. About 25 tons, about five hundred quintals.

Q. What was its condition on board the Brutus?

A. It was in good condition on board the Brutus; it was pronounced good by the surveyors in my presence.

Q. What became of it after the stranding?

A. It was transhipped by whale boats to the barque Serene.

Q. Did you see it afterwards?

A. I did not, it was covered up.

Q. What was the condition of the barque Serene on the voyage to New York?

A. She was in good condition; she had been thoroughly fitted out there.

Q. What was the value of the ship Brutus in your opinion?

A. Twelve thousand dollars.

Q. Are you acquainted with the nature and quality of jerked beef?

A. I have cured it and made it on the coast of Central America.

*Cross examined.*

Q. Where was this survey held on which the jerked beef was found to be in good order?

A. On board the ship Brutus as she lay on the beach, five days after the storm and stranding.

Q. Did you come home in the Serene?

A. I did.

Q. Did you see the jerked beef at the time it was put on board of her?

A. No, sir.

Q. When and where did you last see it?

A. When it was put in the carts, at the side of the ship Brutus, to be carried to the whaleboats some 200 yards off.

Q. When you last saw it, was it in good order and condition as far as you knew?

A. Yes.

Q. Did the Serene take in any other jerked beef besides this lot?

A. I think there was another lot; I am not certain whether it was 25 tons, or 20 tons. I know she took in more than we sent her. I have only the word of the mate of the Serene; neither do I personally know the fact, that the jerked beef of the Brutus went into her.

Q. In what capacity did you come home in the Serene?

A. As second mate.

Q. Have you ever bought or sold ships?

A. I owned part of a vessel since I left the Brutus; that is all my dealings in vessels.

Q. Have you had such knowledge of the cost of building of vessels as to be able to state the value of vessels?

A. I can tell pretty much the value of a vessel by examining her.

Q. In reference to what market do you fix this value?

A. In New York.

Q. Do you know what her value was in the market at Buenos Ayres, where she was lost?

A. I am not acquainted with the market prices in South America.

Q. How long was the voyage of the Serene to New York?

A. It was seventy days. Joseph Adams was her master.

Q. You say you never saw this beef on board the Serene, that it was covered up; what was it covered up with?

A. It was covered up with other beef; that is, other beef was on top of it.

Q. When did you first see that other beef?

A. In the hatchway, between decks, whilst the vessel lay in the outer roads of Buenos Ayres. I think some time about the middle of November. We sailed for New York on the first of December, as I think.

JOSEPH BROWN.

Sworn before me, by the said Joseph Brown, this 6th day of May, A. D. 1845.

GEO. W. MORTON,
*U. S. commissioner.*

It was thereupon admitted by the counsel of the defendants that the protest of the master, mate, and crew of the ship Brutus, was extended before the Consul of the United States, then resident at Buenos Ayres, on the 21st day of October, A. D. 1843, and that under direction of said consul a survey of said ship was made on the 15th day of November, 1843.

And the said plaintiffs, by their said counsel, further to maintain and prove the said issue on their part, gave in evidence a certain deposition in writing, made by one Thomas R. Silk, in the words following:

U. S. circuit court.

JOSEPH ADAMS and others
vs.
CHARLES BARNARD and others.

Thomas R. Silk, a witness produced on behalf of the plaintiffs in above cause de bene esse, by consent of the parties thereto, being duly sworn, saith, that he is of the age of forty-one and upwards; that he is now first mate of the barque Pioneer, and is about to proceed in said barque to the city of Baltimore; that he knows Joseph Adams, one of the plaintiffs.

2. Where were you in the fall of the year A. D. 1843, and what doing?

A. In Buenos Ayres, fitting out the barque Serene.

Q. Did you know the late ship Brutus?

A. I have seen her at anchor at Buenos Ayres, while I was there, and I saw her when ashore.

Q. Who was her master?

A. Joseph Adams.

Q. What was the weather, at the time the Brutus went ashore?

A. It was a heavy gale.

Q. Could she have been got off by any means in that vicinity?

A. I don't think she could, sir; in my opinion, it would have been worth more than the vessel, and she was damaged.

Q. Did you receive on board the Serene any of the cargo of the Brutus?

A. Yes; it was wool, some jerked beef, and hides and horns.

Q. In what condition was the jerked beef when you so received it?

A. There was some of it wet; it got wet in the boats.

Q. How was it brought from the Brutus?

A. In large whale-boats.

Q. Did you take any means to dry that part of the beef that was wet?

A. We spread it out on the deck, all that we saw of it, to dry in the sun.

Q. What was finally done with the beef?

A. It was stowed away below in the after hold, in the run of the vessel, in the dryest part of the ship.

Q. How was it stowed?

A. It was stowed by a stevadore, who was hired on purpose, and knew how to store jerked beef.

Q. What was the condition of that part of the jerked beef that was dry?

A. It appeared good; all parts of the jerked beef appeared to be good, but what was in the bottom of the boats and at the sides.

Q. What kind of a vessel was the Serene as to tightness and seaworthiness?

A. She was a first class vessel.

Q. Do you know what was the condition of the said jerked beef when it reached New York? If so, state.

A. I saw only a part of, and a part of it appeared damaged.

Q. How did you come home from Buenos Ayres?

A. I came home in the barque Serene, as chief mate.

*Being cross examined.*

Q. Had you ever been at Buenos Ayres before the time when the Brutus went ashore?

A. No, sir.

Q. How long had you been there when the Brutus went ashore?

A. About 5 or 6 months.

Q. Were you all that time attached to a vessel?

A. Yes; I was acting both as master and mate of the Serene, and was employed in fitting her out; she had been wrecked in a previous gale.

Q. Was her fitting out complete when this gale occurred?

A. No, sir; we were then fitting her out.

Q. How long did she remain there after the Brutus went ashore?

A. About a month.

Q. In how many boat loads did the jerked beef of the Brutus come?

A. I don't recollect; I think about four or five; I think not more than four.

Q. Was the beef which lay at the bottom and sides of every boat load wet?

A. Yes, all more or less; one in particular very much; we had to stop the boatman from delivering the beef from his boat on board of the Serene, to set him to bailing out the boat.

Q. What was the distance from where the Brutus lay to the Serene?

A. I think about 15 miles.

Q. Were the boats propelled by sails or oars?

A. By sails.

Q. About how long was the trip?

A. Five or six hours.

Q. Did any one boat bring two loads?

A. I forget; but I rather think one boat brought two loads; I am not sure.

Q. Was all the beef transported from the Brutus to the Serene in one day?

A. No; they were two days at it.

Q. How long after the Brutus went ashore was the beef transhipped to the Serene?

A. I think three weeks or a month; we had got most of our cargo in before it came; we left a place separately for it.

Q. What sort of weather was it the first day of the transportation?

A. When they came alongside there was a nasty sea on; the water splashed alongside and over the boat.

Q. Was there no covering to the cargo?

A. They had some green hides spread out over the beef.

Q. Did the boats appear to leak?

A. One of them did.

Q. Did any of the others leak?

A. No; she is the only boat among all the lighters I saw there which leaked.

Q. Is she the one the men had to bail the water out of?

A. Yes, sir.

Q. Did she carry a load the first day!

A. I don't recollect; I think she carried only one load of beef; the next load she brought was all horns.

Q. Are you sure that any of the beef in the other boats got wet?

A. Yes, there was some wet in every boat.

Q. Was it bright and clear, or cloudy, the first day of the transportation in boats?

A. It was clear and bright sky, but strong wind.

Q. How was the weather the second day?

A. Just like that of the first.

Q. How long did the Serene lie there after receiving the beef?

A. I think not over two weeks; though it is so long ago I am not quite certain as to the time.

Q. Did you attend to the drying of the beef on deck before stowing it below?

A. Yes sir.

Q. Did you suppose, at the time, that you dried it thoroughly?

A. Yes; we left it there until night, and turned it over two or three times.

Q. In what part of the vessel was it stowed?

A. In the run of the lower hold, in the after part of the vessel.

Q. Was there anything under it?

A. Nothing but ballast; that is, dry stones and pig iron. This ballast was covered with boards for dunnage, and then straw and mats put upon that again, to receive the beef. The bottom of the beef was four feet, at least, from the ship's bottom.

Q. How near the ballast was the beef?

A. I suppose not nigher than three or four inches.

Q. Was other beef stowed along with this beef in the same place?

A. Yes.

Q. How much other beef?

A. I should think as much as five or six tons on the top of it.

Q. Who did that beef belong to?

A. I don't know; I understood it was different from the Brutus' cargo. Straw and mats were placed between the Brutus' beef and this other beef.

Q. In what way did that other beef come on board?

A. It came in boats too.

Q. Do you know where it came from?

A. I do not.

Q. Did you see the top beef after you came here?

A. I did.

Q. How did it look?

A. The top of it was reddish. I saw no decay about it. I concluded the vessel had sweated. It grew better as we went down, until we got to the Brutus' beef. We took out but little of that 'till we stopped, and I went home. I did not return, or attend to the discharging of the beef?

Q. The top part of the Brutus' beef, which you thus saw at the time mentioned, in what condition was that?

A. It looked better than the top beef. I merely saw the top of

I never heard, 'till yesterday, that it had proved to be damaged on examination.

Q. Was the upper lot of beef, which did not belong to the cargo of the Brutus, decayed or damaged in any respect?

A. Yes, it looked damaged.

Q. Do you know what became of that beef?

A. I do not.

Q. Did you attend to discharging the cargo of the Serene?

A. Yes, all but the beef. Captain Adams told me he would attend to that himself. Captain Adams, one of the plaintiffs, came home as master in the Serene.

Q. Have you never been to Buenos Ayres since?

A. No sir.

Q. Can you tell whether the Brutus was ever gotten off?

A. I do not know.

Q. Why do you say she could not be gotten off?

A. She was very high up; the water is shallow a long way off; and materials, labor, and every thing, are very high there.

*Further direct examination.*

Q. When you state that the Serene left Buenos Ayres a month after the Brutus went ashore, do you mean to give the exact time?

A. No, I do not. I forget the time, whether it was a month or six weeks.

Q. What was the state of the sea when the boat, you say leaked, brought her load of beef?

A. It was a short, ugly sea when she came along side. It caused the water to splash between the vessel and the boat.

Q. Was anything loaded in this boat besides the beef?

A. Horns for dunnage; that is all. THOS. R. SILK.

Subscribed and sworn, by the said Thomas R. Silk, before me, this 19th day of May, A. D. 1845. WM. J. SINCLAIR,
*Commissioner of deeds.*

And the said plaintiffs, by their said counsel, further to maintain and prove the said issue on their part, gave in evidence a certain stipulation, in the words following:

Circuit court of the United States, for the southern district of New York.

JOSEPH ADAMS, Andrew H. Bennett, and Joseph Fletcher.
vs.
CHARLES BARNARD, Abel Adams, George M. Barnard, and Charles Larkin.

The above named defendants admit, for the purpose of this suit, the following matters:

That they were the consignees of twenty bales of Nutria skins, of the

value of eleven thousand dollars, at the port of New York, which were laden on board the ship Brutus, Joseph Adams, master, at the time of her stranding near Buenos Ayres, on or about the 8th day of October, A. D 1843; and further, that the said twenty bales were by the plaintiffs, the owners of said ship, delivered to the said defendants in New York, upon an express agreement by the said defendants to pay the said owners all sums of money lawfully due them for general average and expenses upon, or in respect of, the said twenty bales.

And further, that all the expenditures or disbursements charged in the statement of average presented by the plaintiffs, were actually made for the matters and purposes therein mentioned; but the defendants do not admit that they are answerable for the same, or any part thereof, as general average, or otherwise. And further, that the property or cargo referred to in said statement as having been on board the said ship at the time of her stranding, was actually on board; and that the value thereof at Buenos Ayres, and at New York, and the amount of freight payable to the plaintiffs for the transportation thereof to New York, are correctly given therein. And further, that the cargo on board the said ship at the time of her stranding, was transhipped by the plaintiffs in the barque Serene to the port of New York.

BARNARD, ADAMS & CO.

And the said plaintiffs, by their said counsel, further to maintain and prove the said issue on their part, produced a certain estimate or statement for the adjustment and ascertainment of the proportion of average claimed by the said plaintiffs as being due from, and payable by, the said defendants, in the words following, which was the same statement referred to in said stipulation:

[*Account.*]

| | Disbursements. | General average. | Charges on property not on board. | Charges on jerked beef. | Owner. |
|---|---|---|---|---|---|
| | ***J. M. Ela.*** | | | | |
| | Cartage and lighterage to barque Serene, from ship Brutus, 73 bales, at $48 each | $3,504 00 | | | |
| | 400 quintals jerked beef, at $7 per quintal | 2,800 00 | | | |
| | 13,200 horns, at $90 per mil. | 1,188 00 | | | |
| | Cartage of spars, sails, and rigging to city, 3 carts | 330 00 | | | |
| | Cartage of captain and seamen's baggage | 120 00 | | | |
| | Horse hire and copying letters | 180 00 | | | |
| 10,756 00 | Cartage of 2,634 hides to city at $ each | 2,634 00 | | | |
| | ***Samuel B. Hale & Co.*** | | | | |
| | C 305<br>Receiving J R 304 is 609 hides, at $15 | 91 02 | | | |
| | Peonage for drying | 50 00 | | | |
| | Delivering 609 hides, at $15 | 91 02 | | | |
| | Cartage, 609 do. at $35 | 214 00 | | | |
| 522 05 | Storage, 1 month, at 1 real | 76 01 | | | |
| | Cartage of 2 bales returned from the lighters after the gale | – | $20 00 | | |
| 30 00 | Loading 2 bales | – | 10 00 | | |
| | ***Samuel B. Hale & Co.*** | | | | |
| | Receiving and delivering 2,634 hides, as per agreement, at $65 | 1,712 00 | | | |
| 1,761 06 | Beating 995 hides, marked B & Co., at $5 | 49 06 | | | |
| | ***P. Bernol & Co.*** | | | | |
| | To demurrage of Lighter Anna, with 546 hides and 4,900 horns, loaded for ship Brutus before the gale, and delivered to barque Serene, 6 days | – | 1,000 00 | | |
| 14,070 03 | | 13,040 03 | 1,030 00 | | |

| | | | | | |
|---|---|---|---|---|---|
| | Brought forward - - - - | 13,040 03 | 1,030 00 | | |
| | *P. Barnol & Co.* | | | | |
| 1,975 00 | Lighterage to the outer roads on 2,634 hides at 6 reals each - - | 1,975 00 | | | |
| | *James Abbot.* | | | | |
| | Hire of whale boat from inner roads - - - - - | 50 00 | | | |
| | Do do do do - - - - - | 50 00 | | | |
| | Cart hire - - - - - - - - - | 6 00 | | | |
| 238 00 | Stevadore's bill, storing beef - - - - - - | 132 00 | | | |
| | *James Abbot.* | | | | |
| | Use of whale boat to go up the river with survey - - - | 360 00 | | | |
| 313 00 | Cart hire - - - - - - - - - | 13 00 | | | |
| | *P. Bernol & Co.* | | | | |
| 30 00 | Lighterage on 2 bales, shipped from Brutus, transferred to Serene - | 30 00 | | | |
| | *William Bettison.* | | | | |
| 100 00 | Horse hire for delivering cargo to ship Brutus - - - - | 100 00 | | | |
| | *Nelson Hartwig.* | | | | |
| | To cartage and peons for spreading sails, &c., at auction - - | 50 00 | | | |
| 160 00 | To steward's expenses, two trips from the ship - - - - | 110 00 | | | |
| 16,886 03 | | 15,856 03 | 1,030 00 | | |
| 16,886 03 | Brought forward - - - - | 15,856 03 | 1,030 00 | | |
| | *Joseph Adams.* | | | | |
| 3,196 07 | Cash paid for discharging cargo, 132 days, at 90 cts., $115 80, silver; 90 days attending ship, at $81, do. - - - - - | 1,900 07 | – | – | 1,296 00 |

[*Account*—Continued.]

| | Disbursements. | | General average. | Charges on property not on board. | Charges on jerked beef. | Owner. |
|---|---|---|---|---|---|---|
| | *Mrs. Sides.* | | | | | |
| 1,200 00 | Bill boarding and lodging Capt. Adams, 50 days, at $24 per day - | | – | – | – | $1,200 00 |
| | *Joseph Adams.* | | | | | |
| 2,066 05 | Wages from 12th October to 30th November, at $100 per month, $166 66, silver - - - - - - - - - - | | – | – | – | 2,066 05 |
| | *Nelson Hartwig.* | | | | | |
| 2,000 00 | Bill for Capt. Adams's passage from Buenos Ayres, in barque Serene - | | – | – | – | 2,000 00 |
| | *United States Consulate.* | | | | | |
| | Noting protest, $2, order for survey, $2 - - - - - | $4 | | | | |
| | Return and report of survey - - - - - - | 4 | | | | |
| | Survey of Capt. Collier - - - - - - | 32 | | | | |
| | " of Capt. Bullen - - - - - - | 32 | | | | |
| | " of Hays (carpenter) - - - - - | 32 | | | | |
| | Extending protest and copy - - - - - | 20 | | | | |
| | Duplicate and survey - - - - - - | 8 | | | | |
| 2,178 00 | Currency, at $16½ - - - - - - - | $132 | $2,178 00 | | | |
| 27,527 07 | | | $19,935 02 | $1,030 00 | – | $6,562 05 |
| 27,527 07 | Brought forward - - - - - | | 19,935 02 | 1,030 00 | – | 6,562 05 |

| | | | | | |
|---|---|---|---|---|---|
| | *United States Consulate.* | | | | |
| | Receiving and delivering papers ship Brutus - - - 4 | | | | |
| | Two certificates for entry - - - - - 4 | | | | |
| | One certificate to crew list - - - - - 2 | - | - | - | 160 00 |
| | Certificate to Power to sell - - - - - 2 | | | | |
| | Two certificates to account sales - - - - - 4 | | | | |
| | Silver - - - $16 | 96 00 | | | |
| 256 00 | Equal in currency to - - - - - - $256 | | | | |
| | *J. M. Fla.* | | | | |
| 650 00 | Bill, transhipping from ship Brutus on shore to barque Potomac, in the outer roads, 10 bales of Nutria skins, at $650 - - - | 650 00 | | | |
| 28,433 07 | | 20,681 02 | 1,030 00 | - | 6,722 05 |
| | *Joseph Adams.* | | | | |
| 1,421 65 | Commission on disbursements and expenses, at 5 p. c. on $28,433 07 - | 1,034 05 | 51 50 | - | 336 10 |
| 29,854 72 | Equal, at $16 currency for $1 silver, - - - - - | 21,715 07 | 1,081 50 | - | 7,058 15 |
| 1,865 92 | to | 1,357 19 | 67 60 | - | 441 13 |
| | *Wages of ship's company from 10th October.* | | | | |
| | Captain at $100 per month, 51 days - - - - - | 170 00 | | | |
| | 1st mate 30 " 51 " - - - - - | 51 00 | | | |
| | 2d mate 20 " 25 " - - - - - | 16 66 | | | |
| | Cook 14 " 50 " - - - - - | 23 34 | | | |
| | Steward 14 " 50 " - - - - - | 23 34 | | | |
| 355 54 | 8 seamen 12 " 178 " - - - - - | 71 20 | | | |
| 2,221 46 | 405 days. | 1,712 73 | 67 60 | - | 441 13 |
| 2,221 46 | Brought forward - - - - - | 1,712 73 | 67 60 | - | 441 13 |

[*Account*—Continued.]

| | Disbursements. | General average. | Charges on property not on board. | Charges on jerked beef. | Owner. |
|---|---|---|---|---|---|
| | *Provisions for ship's company from 10th October.* | | | | |
| | Captain, at 100 cents per day - - - - - 51 00 | | | | |
| | Two mates, each, at 50 cents per day, 76 days - - - 38 00 | | | | |
| 172 40 | 10 men, (crew,) each, at 30 cents per day, 278 days - - 83 40 | | | | |
| | | $172 40 | | | |
| | *William W. De Forest & Co.* | | | | |
| | To cash paid for deposition of Captain Adams, that he could not procure any other vessel to bring the cargo of the Brutus - - - | 1 00 | | | |
| | To cash paid for order to appraise damages on jerked beef - - | - | - | 20 | |
| | To cash paid board of wardens for surveys on jerked beef, and certificate to obtain return of duty on same - - - - - | - | - | $4 25 | |
| | Extra labor, overhauling jerked beef - - - - - | - | - | 3 75 | |
| | Kip's bill, lighterage on jerked beef thrown overboard - - - | - | - | 10 00 | |
| 25 24 | Postage, documents relative to loss of ship Brutus, from Buenos Ayres via Boston - - - - - - - - - | 6 04 | | | |
| | *William W. De Forest & Co.* | | | | |
| | Freight, per barque Serene, on 400 quintals jerked beef and primage - | - | - | 210 00 | |
| | Do do on 2,064 pounds do do - | - | - | 10 86 | |
| | Interest on 1,000 deposited at custom house to secure duties, afterwards refunded, 16th February to 16th March, ½ p. c. - - - | - | - | 5 00 | |
| 226 86 | Permits, bonds, &c. - - - - - - - - | - | - | 1 00 | |
| 2,645 96 | | 1,892 17 | 67 60 | 245 06 | 441 13 |
| 2,645 96 | Brought forward - - - - - | 1,892 17 | 67 60 | 245 06 | 441 13 |

| | | | | | | |
|---|---|---|---|---|---|---|
| 1,419 08 | Value of jerked beef damaged and destroyed by the stranding of the ship Brutus - - - - - - - - - - - | | - | - | 1,419 08 | |
| | Value of the ship Brutus, lost by stranding - - | 9,000 00 | | | | |
| 6,932 25 | Less, proceed sales at Buenos Ayres currency, $33,077 07, equal to - - - - - - - | 2,067 75 | 6,932 25 | | | |
| 2 00 | Average bond - - - - - - - - - - | | 2 00 | | | |
| 1,584 52 | Freight on the cargo on board ship Brutus, lost by her being stranded - | | 1,584 52 | | | |
| 100 00 | For this adjustment - - - - - - - - | | 100 00 | | | |
| 12,683 81 | | | 10,510 94 | 67 60 | 1,664 14 | 441 13 |
| 262 77 | Commission for collecting general average, 2½ p. c. - - - | | 262 77 | | | |
| 12,946 58 | Amount of general average - - - - - - | | $10,773 71 | | | |
| | Charges on property in lighters, &c. - - - - - | | - | $67 60 | | |
| | Charges on jerked beef - - - - - - - - | | - | - | $1,664 14 | |
| | Owners - - - - - - - - - - | | - | - | - | $441 13 |

*The following property was on board the ship Brutus at the time of her stranding.*

| | Cost, per invoice, at Buenos Ayres | Rate. | U. States currency. | Value at New York. |
|---|---|---|---|---|
| 400 qls. of beef, consigned to Jos. Adams | 18,003 0 | at $16 | 1,125 18 | |
| 53 bales wool, 2 bales sundries, consigned to Joseph Adams | 47,494 4 | 16½ | 2,878 46 | 3,600 00 |
| 995 hides, consigned to Joseph Adams | 3,8003 0 | 16 | 2,375 19 | 2,738 00 |
| An interest in same, consigned to Jamison & Sanford | 3,200 0 | 16 | 200 00 | 188 00 |
| 1061 hides, consigned to John Rodman | 44,690 0 | 16 | 2,793 12 | 2,648 00 |
| 20 bales Nutria skins, consigned to Barnard, Adams & Co. | 107,393 5 | 17 | 6,317 27 | 11,000 00 |
| 10 bales Nutria skins, consigned to W. W. De Forest & Co. | 47,113 7 | 16½ | 2,855 38 | 4,267 00 |
| 579 hides, consigned to E. Corning & Son | 24,828 3 | 16 | 1,551 77 | 1,471 00 |
| 13600 horns, consigned to L. C. Carter & Co. | 9,311 3 | 16 | 581 96 | 582 00 |
| | $340,037 6 | – | $20,678 33 | $26,494 00 |

*Freight on the above goods lost by the stranding.*

| | |
|---|---|
| 400 qls. beef, consigned to Joseph Adams | 210 00 |
| 55 bales merchandise, consigned to Joseph Adams | 442 65 |
| 995 hides, consigned to Joseph Adams | 221 07 |
| 1161 hides, consigned to John Rodman | 237 80 |
| 20 bales Nutria skins, consigned to Barnard, Adams & Co. | 141 18 |
| 10 bales Nutria skins, consigned to W. W. De Forest & Co. | 58 33 |
| 579 hides, consigned to E. Corning & Son | 132 97 |
| 13600 horns, consigned to L. C. Carter & Co. | 140 52 |
| | 1,584 52 |

*The following goods were in lighters and on carts ready to be put on board.*

| | Value Buenos Ayres currency. | Rate. | Value U. States currency. | Value in New York. |
|---|---|---|---|---|
| 737 hides, consigned to E. Corning & Son | 31,603 5 | at $16 | 1,975 22 | 1,875 00 |
| 421 hides, consigned to John Rodman | 17,025 0 | 16 | 1,064 04 | 1,010 00 |
| 4900 horns, consigned to L. C. Carter & Co. | 3,355 0 | 16 | 209 68 | 209 00 |
| | $51,983 5 | – | $3,248 94 | $3,094 00 |

Amount of general average - - - - - - - $10,773 71

*Contributary interest and apportionment of general average.*

| | | | |
|---|---|---|---|
| Vessel lost by stranding, and paid for in general average contribution, valued at - - - - - | $9,000 00 | Pays | $2,615 12 |
| Freight lost by stranding of goods on board the ship Brutus, and paid for in general average contribution - - | 1,584 00 | Pays | 460 26 |
| Cargo, consigned, as follows: | | | |
| Joseph Adams, on jerked beef - - - - | 00 00 | Pays | 00 00 |
| Joseph Adams, on 55 bales sundries - - - | 3,600 00 | Pays | 1,046 05 |
| Joseph Adams, on 995 hides - - - - | 2,738 00 | Pays | 795 58 |
| Jamison & Sandford, on interest in same - - - | 188 00 | Pays | 54 63 |
| John Rodman, on 1061 hides - - - - | 2,648 00 | Pays | 769 43 |
| Barnard, Adams & Coon, 20 bales Nutria skins - - | 11,000 00 | Pays | 3,196 25 |
| William W. De Forest, 10 bales Nutria skins - - | 4,267 00 | Pays | 1,239 86 |
| E. Corning & Son, 579 hides - - - - | 1,471 00 | Pays | 427 42 |
| L. C. Carter & Co., 13,600 horns - - - - | 582 00 | Pays | 169 11 |
| | $37,078 00 | | $10,773 71 |

Equal to 29.0588 per cent.

*Appertionment of charges on goods in lighters and on carts intended for ship Brutus, but not on board at the time of her stranding.*

Total amount of expenses - - - - - - - $67 60

| | | | |
|---|---|---|---|
| E. Corning & Son, on 737 hides - - - - | $1,875 00 | Pays | $40 97 |
| John Rodman, on 421 hides - - - - | 1,010 00 | Pays | 22 06 |
| L. C. Carter & Co., 4900 horns - - - - | 209 00 | Pays | 4 57 |
| | $3,094 00 | | $67 60 |

*Settlement.*

| | Debit. | Credit. | To pay. | To receive. |
|---|---|---|---|---|
| The Jackson Marine Insurance Company and New York insurance Company, each one-half, receive for value of ship Brutus, lost by the voluntary stranding - - | – | $9,000 00 | | |
| Do. for freight on board Brutus, and lost - | – | 1,584 52 | | |
| Pay for general average on vessel - - | $2,615 12 | | | |
| Pay for general average on freight - | 460 26 | | | |
| Pay for general average on cargo, for James Adams, viz: 55 bales sundries - - | 1,046 05 | | | |
| 995 hides - - - | 795 58 | | | |
| Pay for general average on cargo, for William W. De Forest & Co., 10 bales Nutria | 1,239 86 | | | |
| | $6,156 87 | $10,584 52 | | |

*Settlement*—continued.

| | Debit. | Credit. | To pay. | To receive. |
|---|---|---|---|---|
| Jackson Marine Insurance Comp., one-half | $3,078 44 | $5,292 26 | - | $2,213 82 |
| New York Insurance Company, one-half | 3,078 43 | 5,292 26 | - | 2,213 83 |
| Jamison & Sanford, pay on their interest in 935 hides, consigned to Joseph Adams | 54 63 | - | $54 63 | |
| Barnard, Adams & Co., pay on 20 bales nutria skins | 3,196 25 | - | 3,196 25 | |
| John Rodman, pays on 1061 hides, general average | 769 43 | | | |
| John Rodman, pays on 421 hides, special charges | 22 06 | - | 791 49 | |
| E. Corning & Son, pay on 579 hides, general average | 427 42 | | | |
| E. Corning & Son, pay on 737 [hides,] special charges | 40 97 | - | 468 39 | |
| L. C. Carter & Co., pay on 13,600 horns, general average | 169 11 | | | |
| L. C. Carter & Co., pay on 4900 horns, special charges | 4 57 | - | 173 68 | |
| Joseph Adams, pays for proceeds [of] ship Brutus, &c. | 2,067 75 | | | |
| Joseph Adams, pay for amount placed to debit of owners of ship, for advances | 441 13 | | | |
| Received for amount his account of disbursements | - | 1,865 92 | | |
| Received amount allowed for wages, ship's company | - | 355 54 | | |
| Received amount allowed for provisions, ship's company | - | 172 40 | | |
| | $2,508 88 | $2,393 86 | $115 02 | |
| S. Baldwin, receives for adjustment and average bond | - | - | - | $102 00 |
| Underwriters or owners of jerked beef pay amount placed to their debit for losses of beef and charges on same | $1,664 14 | | | |
| Receive amount charged for value for jerked beef destroyed | - | 1,419 08 | 245 06 | |
| | | | $5,044 52 | $4,529 65 |
| William W. De Forest & Co., receive for amount of their bills for disbursements, $25 24 and $226 86 | - | 252 10 | | |
| William W. De Forest & Co., receive for commission for collecting amount, general average | - | 262 77 | - | $514 87 |
| | | | $5,044 52 | $5,044 52 |

S. BALDWIN,
*Insurance Broker and Notary Public.*

And thereupon the said plaintiffs, by their said counsel, rested their said cause.

And the said defendants, by their said counsel, then and there insisted and prayed the said circuit court, so held before the said judge, to charge the said jury:

First. That the said evidence was not sufficient in law to prove that the stranding or running ashore of the said ship Brutus had been voluntary or intentional, so as to entitle the plaintiffs to recover for such stranding or running ashore in general average.

Secondly. That if the will and agency of the commander of said vessel, operating no further in respect to her stranding than in selecting with a view to the greater safety of herself, her cargo, and her crew, the precise part of the shore on which she struck, and directing her course to it at a time when impelled towards the shore by the irresistible violence of the storm, her loss thereon by such storm was inevitable, such stranding was not in judgment of law a voluntary or intentional sacrifice entitling the plaintiffs to compensation in general average for the loss of their vessel thereby.

And in case the circuit court should not give said instructions, or either of them, then the said defendants by their said counsel, then and there insisted, and prayed the said circuit court so held by and before the said judge, to charge the said jury.

Thirdly. That for the purpose of adjusting the general average claimed the cargo should be estimated at its value at Buenos Ayres, or on the beach near Buenos Ayres, where it was delivered from the said ship.

Fourthly. That no allowance should be made in the general average claimed, for the wages or expenses of the master or crew of said ship, after the time at which it was ascertained that the vessel could not be gotten afloat, and her sale was determined upon; and

Fifthly. That the plaintiffs were not entitled to recover in general average the commission of two and a half per cent. claimed by them. But the said circuit court, so then and there held before the said judge, did then and there refuse to give the said jury any of the said instructions so prayed for as aforesaid; to which decision and refusal of the said court, so held before the said judge, the said defendants, by their said counsel, did then and there, as to each of such instructions so requested as aforesaid, except.

And the said circuit court, by the said judge so then solely presiding therein and holding the same, did then and there charge the said jury as follows, to wit:

First. The evidence on the subject of the stranding consists in the uncontradicted and unimpeached testimony of a single witness. He was the acting master of the vessel at the time of the loss in question. He states that when the vessel was without any means of resisting the storm, and her going ashore upon a rocky and more dangerous part of the shore was in his opinion inevitable, he did intentionally and for the better security of the property and persons engaged on the adventure,

give her a direction to what he supposed to be, and what proved to be, a part of the shore where she could lie more safely. These facts, if credited by you, constitute in judgment of law a voluntary sacrifice of the vessel, and for such sacrifice the plaintiffs are entitled to recover in general average.

Secondly. The goods having been transferred to another vessel by the plaintiffs and carried to New York, it is to be considered by you that the adventure was continued, notwithstanding the disaster, and terminated at the latter place; consequently the cargo is properly estimated, according to its value at New York, in the adjustment of general average which has been produced.

Thirdly. But inasmuch [as] the jerked beef does not appear to have suffered any injury by the voluntary stranding, and appears from some unascertained cause to have become of no value before its arrival at New York, it is neither to be allowed for, nor contributed for, in the average. In the other two particulars, in which it has been objected to by the counsel for the defendants, it is to be considered by you as correct in principle.

And the said defendants, by their said counsel, did then and there except to each of the said directions in the said charge of the said circuit court, so then and there given by the said judge thereof to the said jury.

And with that charge the said circuit court, so then and there held by and before the said judge, left the said cause to the said jury.

And the jury aforesaid thereupon gave their verdict for the said plaintiffs for three thousand one hundred and ninety-six dollars and twenty-five cents damages, and six cents costs.

And inasmuch as the said several matters so produced and given in evidence on the part of the said plaintiffs, and the said instructions so by the said defendants refused to be given to the said jury, and so refused to be given by the said circuit court as aforesaid, and the said charge and instructions so given to the said jury by the said circuit court, and the said several exceptions to such refusal to give said instructions so requested as aforesaid, and to the said charge so taken by the said defendants, do not appear by the record of the verdict *of the verdict* aforesaid, the said defendants, by their said counsel, did then and there propose their aforesaid exceptions to the said refusal, and to the said charge so excepted to as aforesaid, and requested the said judge to put his seal to this bill of exceptions, containing the said several matters so produced and given in evidence on the part of the said plaintiffs as aforesaid, and the said instructions, request, refusal, charge, and exceptions aforesaid, according to the form of the statute in such case made and provided.

And thereupon, the said judge, at the request of the said defendants, by their said counsel, did put his seal to this bill of exceptions, pursuant to the aforesaid statute in such case made and provided, this sixteenth day of April, in the year one thousand eight hundred and forty-seven.

(Signed) S. NELSON. [L. S.]

Filed , 1847.